

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Proposed Amendments to Regulations: Workers' Compensation – Health Care Organizations**

The Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), acting pursuant to the authority granted by Labor Code Sections 133, 4600.3, 4600.5, 4600.7 and 5307.3, proposes to amend existing regulations to implement the amendments to Labor Code Section made by AB 749 (Calderon, 2001-2002, Statutes 2002, Chapter 6, Section 61). The effective date of these amendments is January 1, 2003.

The Administrative Director is also proposing to amend existing regulations to conform the language of these regulations to prior changes in the statutory provisions that the regulations implement and make specific.

The proposed amendments will also make changes to an existing form to clarify and streamline the annual enrollment process for employees whose employers contract with an HCO.

The proposed amendments will also require payment of an existing administrative fee in one single payment instead of two payments.

Finally, the proposed amendments will also repeal an existing provision that provides for HCOs that received provisional certification under prior provisions of the current regulations to obtain full certification upon payment of the remaining balance of the application fee required by the current regulations.

The proposed amendments are to Sections 9771, 9771.2, 9771.66, 9772, 9779, 9779.1, 9779.3, 9779.4, 9779.45 and 9779.5.

The proposed amendments are to Sections 9771, 9771.2, 9771.66, 9772, 9779, 9779.1, 9779.3, 9779.4, 9779.45 and 9779.5. These sections concern:

- The procedures under which an entity may apply for certification as a Health Care Organization (hereinafter "HCO");
- an HCO's continuing obligation to furnish information concerning its operations,
- prohibitions against deceptive advertising by HCOs;
- the general standards an HCO must meet to obtain and maintain its certification;
- the length of time for which certification is valid and the process for recertification;
- the procedure under which the Division of Workers' Compensation will

- conduct on-site surveys of HCOs;
- the obligations to its employees of an employer covered by a contract with an HCO;
- the content of the form that employers who contract with an HCO must annually provide to their employees;
- the minimum periods of employer medical control over employees enrolled in an HCO; and,
- the payment by HCOs of administrative fees to the Administrative Director.

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date: Friday, September 13, 2002**

**Time: 10:00 a.m.**

**Place: Auditorium**

**The Governor Hiram Johnson State Office Building  
455 Golden Gate Avenue  
San Francisco, California 94102**

The public hearing room is wheelchair accessible. Persons requiring additional accommodation of a disability are requested to alert the contact person identified below so that special arrangements may be made.

## **BACKGROUND TO REGULATORY PROCEEDING:**

Labor Code Section 4600.3 allows employers to contract with HCOs to provide the employer's employees with treatment for work-related injuries and illnesses. This code section also specifies how long an employee who is being treated by an HCO must wait before he or she may choose to receive treatment from their own physician.

Labor Code Section 4600.5 specifies the requirements for various entities to apply for and receive certification as an HCO.

Labor Code Section 4600.7 creates the Workers' Compensation Managed Care Fund in the State Treasury and authorizes the Administrative Director to establish a schedule of fees and revenues to be charged to certified HCOs and applicants for certification to fund the administration of the HCO program.

### **1. Section 9771 – Applications for Certification:**

#### **Section Repealed: Subdivision (a)(1):**

This subdivision provides for an entity licensed as a full service health care service plan under Section 1353 of the Health and Safety Code (Knox-Keene Health Care Service Plan Act) to apply for certification as an HCO.

**Specific Purpose of Repeal:**

The subdivision is being repealed as the process for certification of a Knox-Keene Health Care Service Plan is different than the process for other entities and is being moved to another subdivision.

The remaining subdivisions are being renumbered to accommodate this change.

**Factual Basis That Repeal is Necessary:**

Effective January 1, 2003 Labor Code Section 4600.5 will provide that if an HCO is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, that organization (an “HMO”) shall be deemed to be a health care organization able to provide health care pursuant to Section 4600.3 without further application. The HMO must nevertheless meet specified additional requirements. Therefore the process for seeking certification by an HMO is different than the process for other entities and it is necessary to delete the provisions regarding HMOs from subdivision (a)(1).

**Section Amended: Subdivision (a)(3) – renumbered (a)(2):**

This subdivision permits an entity authorized as a workers compensation health care provider organization (WCHCPO) by the Commissioner of Corporations pursuant to Part 3.2 of Division 4 of the Labor Code to apply for certification as an HCO. (A WCHCPO is any applicant for certification or any certified HCO that is not a disability insurer licensed by Department of Insurance or a Knox-Keene Health Care Service Plan Act licensed HMO. An example of a WCHCPO can include a hospital network, a PPO or an industrial medicine clinic network.)

**Specific Purpose of Amendment:**

The subdivision is being amended to delete the reference to authorization by the Commissioner of Corporations.

**Factual Basis That Amendment is Necessary:**

Responsibility for authorizing WCHCPOs was legislatively transferred from the Commissioner of Corporations to the Administrative Director by SB 1063 (Peace, 1997-1998, Statutes 1997, Chapter 346, Section 5).

The amendment of this subdivision is a change without regulatory effect pursuant to § 100(a)(6), Title 1, California Code of Regulations, as this action will conform the regulatory provision to a changed California statute. The current provision is inconsistent with and superseded by the changed statute, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

**Section Amended: Subdivision (c):**

This subdivision requires HCO applicants that are also licensed and regulated by other entities to demonstrate that they are in good standing with those entities as a condition of applying for HCO certification.

**Specific Purpose of Amendment:**

The first proposed amendment will delete the reference to WHCHPOs. Responsibility for authorizing WCHCPOs was legislatively transferred from the Commissioner of Corporations to the Administrative Director by Statutes 1997, Chapter 346, Section 5.

The second proposed amendment will change a reference in this subdivision from the “Commissioner of Corporations” or the “Department of Corporations” to the “Director of the Department of Managed Health Care” or the “Department of Managed Health Care.”

**Factual Basis That Amendment is Necessary:**

As to the first proposed amendment, responsibility for authorizing WCHCPOs was legislatively transferred from the Commissioner of Corporations to the Administrative Director by SB 1063 (Peace, 1997-1998, Statutes 1997, Chapter 346, Section 5).

The second proposed amendment will conform the language of the regulation to the 1999 and 2000 amendments to Labor Code Section 4600.5. (Statutes 1999, Chapter 525 Section 22 and Statutes 2000, Chapter 857, Section 19.)

These amendments are both changes without regulatory effect pursuant to § 100(a)(6), Title 1, California Code of Regulations, as this action will conform the regulatory provisions to a changed California statute. The current provisions are inconsistent with and superseded by the changed statute, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

**Section Amended: Subdivision (d)**

This subdivision allows HCO applicants that are also licensed and regulated by other entities to meet the requirements for HCO certification by submitting copies of any relevant exhibits, sections or other documents submitted as part of their primary certification application, provided that the applicant (1) verifies the other licensing entity has fully reviewed and approved the submitted information, (2) provides a concise narrative identifying any manner in which HCO services will be provided differently from those provided under the primary certification, and (3) provides a concise description for each requirement of this article, specifying how occupational medical and health care services or other services specifically and exclusively required by this article will be met.

**Specific Purpose of Amendment:**

The proposed amendment deletes references to the “Department of Corporations.”

**Factual Basis That Amendment is Necessary:**

The proposed amendment will conform the language of the regulation to the 1999 and 2000 amendments to Labor Code Section 4600.5. (Statutes 1999, Chapter 525 Section 22 and Statutes 2000, Chapter 857, Section 19.)

The proposed amendment is a change without regulatory effect pursuant to § 100(a)(6), Title 1, California Code of Regulations, as this action will conform the regulatory provision to a changed California statute. The current provision is inconsistent with and superseded by the changed statute, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

**Section Amended: Subdivision (e):**

This subdivision specifies information that must be provided as part of the certification application.

**Specific Purpose of Amendment:**

The proposed amendment corrects an erroneous cross-reference from Subdivision (f) to (b).

**Factual Basis That Amendment is Necessary:**

The existing cross-reference is incorrect and likely to confuse the regulated public.

The proposed amendment is a change without regulatory effect pursuant to § 100(a)(4), Title 1, California Code of Regulations. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

**Section Amended: Subdivision (f):**

This subdivision allows a WCHCPO to take credit against its HCO application fee for any amount paid to the Department of Corporations for authorization as a WCHCPO.

**Specific Purpose of Amendment:**

The subdivision is being amended to delete the reference to WHCHPOs.

**Factual Basis That Amendment is Necessary:**

Responsibility for authorizing WCHCPOs was legislatively transferred from the Commissioner of Corporations to the Administrative Director by Statutes 1997, Chapter 346, Section 5.

The proposed amendment is a change without regulatory effect pursuant to § 100(a)(6), Title 1, California Code of Regulations, as this action will conform the regulatory provision to a changed California statute. The current provision is inconsistent with and superseded by the changed statute, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provisions.

**Section Adopted: Subdivision (g):**

**Specific Purpose of Adoption:**

Effective January 1, 2003 Labor Code Section 4600.5(c) will be amended to provide that an HMO licensed pursuant to the Knox-Keene Health Care Service Plan Act shall be deemed to be a HCO without further application. Those HCOs will be required to maintain good standing with the Department of Managed Health Care and meet additional requirements as specified, including complying with any other requirement the Administrative Director determines is necessary to provide medical services to injured employees consistent with the intent of Article 2 of Chapter 2 of Part 2 of Division 4 of the Labor Code, including, but not limited to, a written patient grievance policy.

The proposed new subdivision will provide that in lieu of an application for certification, an HMO deemed to be an HCO pursuant to Labor Code Section 4600.5(c) shall submit to the Administrative Director a concise description of how the plan will satisfy the requirements of Labor Code Section 4600.5(c)(1 - 5) and Title 8, California Code of Regulations, Sections 9772 through 9778, inclusive. The Administrative Director considers compliance with Sections 9772 through 9778 necessary for an HMO deemed an HCO to adequately provide medical services to injured employees.

Proposed new subdivision (g)(1) will also require that at the time the materials required by this subdivision are submitted to the Administrative Director for review, the plan shall pay a nonrefundable documentation processing and review fee of \$10,000.

Proposed new subdivision (g)(1) will also require a written certification that the health plan is not in violation of any provision of law or rules or orders of the Director of the Department of Managed Health Care, and that there are no outstanding orders, undertakings, or deficiency letters which involve the health plan. The requirement of this Subdivision may be satisfied by verified statement under penalty of perjury by the president or managing officer of the health plan that the plan meets the requirements of this Subdivision, subject to verification by the Administrative Director.

Finally, Labor Code Section 4600.7 is being added to the authority note for Section 9771.

**Factual Basis That Adoption is Necessary:**

Although an HMO will be deemed an HCO without the need for an application, it will still be required to meet the requirements of Labor Code Section 4600.5(c)(1 - 5) and those requirements

the Administrative Director determines are necessary to provide medical services to injured employees consistent with the intent of Article 2 of Chapter 2 of Part 2 of Division 4 of the Labor Code, including, but not limited to, a written patient grievance policy. The proposed new subdivision will inform the regulated public that the Administrative Director has determined that compliance with Sections 9772 through 9778 of Title 8 is necessary for an HMO deemed an HCO to adequately provide medical services to injured employees. (Section 9772 sets forth the general standards an HCO must meet to obtain and maintain its certification, Section 9773 prescribes treatment standards, Section 9773.1 requires an HCO to maintain guidelines for referrals to chiropractors, Section 9774 concerns quality of care standards, Section 9775 specifies that an HCO must have a written grievance and dispute procedure, Section 9776 requires HCOs to provide workplace safety and health services, Section 9776.1 requires HCOs to maintain return to work programs, Section 9777 requires HCOs to provide patient educational and informational services, Section 9779.1 requires HCOs to cooperate with any on-site survey conducted by the Division and Section 9778 requires HCOs to report specified information to the Administrative Director.)

The proposed addition of Labor Code Section 4600.7 to the authority note will inform the regulated public that this section gives the Administrative Director the authority to establish a schedule of fees and revenues to be charged to certified HCOs and applicants for certification to fully fund the administration of the HCO statutes and regulations.

## **2. Section 9771.2 – Information to be Furnished as it Becomes Available:**

### **Section Amended: Subdivision (b)(1):**

The subdivision requires an HMO that is either applying for or that has been certified as an HCO to notify the Administrative Director, within 5 days of the day it becomes aware of the fact, that proceedings have begun against the plan under Articles 7 or 8 of the Knox-Keene Health Care Service Plan Act of 1975.

### **Specific Purpose of Amendment:**

The proposed amendments will delete the references to an HMO being an applicant for certification as an HCO.

The proposed amendment will also change references in this section from the “Commissioner of Corporations” or the “Department of Corporations” to the “Director of the Department of Managed Health Care” or the “Department of Managed Health Care.”

The third proposed amendment will conform the provisions of subdivision (b)(1) to the process under which an HMO deemed an HCO pursuant to Labor Code Section 4600.5(c) obtains its certification by submitting the documentation required by Section 9771, subdivisions (g) (1) and (2) in lieu of the more extensive application required of other entities.

### **Factual Basis That Amendment is Necessary:**

As to the first and third proposed amendments, effective January 1, 2003 Labor Code Section

4600.5(c) will be amended to provide that an HMO licensed pursuant to the Knox-Keene Health Care Service Plan Act shall be deemed to be a HCO without further application.

As to the second proposed amendment, that amendment will conform the language of the regulation to the 1999 and 2000 amendments to Labor Code Section 4600.5. (Statutes 1999, Chapter 525 Section 22 and Statutes 2000, Chapter 857, Section 19.)

The proposed amendments to this subdivision are changes without regulatory effect pursuant to § 100(a)(6), Title 1, California Code of Regulations, as this action will conform the regulatory provisions to changed California statutes. The current provision is (and in part will become) inconsistent with and superseded by the changed statutes, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

### **Section Repealed: Subdivision (3):**

The subdivision requires a WCHCPO that is either applying for or that has been certified as an HCO to notify the Administrative Director, within 5 days of the day it becomes aware of the fact that the Commissioner of Corporations has initiated proceedings against the plan under Chapters 7 or 8 of the Workers' Compensation Health Care Provider Organization Act.

### **Specific Purpose of Repeal:**

The existing subdivision is being repealed.

### **Factual Basis That Repeal is Necessary:**

Responsibility for authorizing WCHCPOs was legislatively transferred from the Commissioner of Corporations to the Administrative Director by Statutes 1997, Chapter 346, Section 5.

This change is a change without regulatory effect pursuant to § 100(a)(6), Title 1, California Code of Regulations, as this action will conform the regulatory provision to a changed California statute. The current provision is inconsistent with and superseded by the changed statute, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

## **3. Section 9771.66 – Deceptive Advertising:**

### **Section Amended: Subdivision (c)**

The subdivision defines as untrue, misleading or deceptive, any advertisement or other consumer information that represents that an organization, firm or solicitor or any provider or other person associated therewith is licensed or regulated by the Department of Corporations or Administrative Director or other governmental agency, unless such statement is required by law or regulation or unless such statement is accompanied by a satisfactory statement which counters



any inference that such licensing or regulation is an assurance of financial soundness or the quality or extent of workers' compensation health care.

**Specific Purpose of Amendment:**

The proposed amendment changes a reference in this section from the “Department of Corporations” to the “Department of Managed Health Care.”

**Factual Basis That Amendment is Necessary:**

The proposed amendment will conform the language of the regulation to the 1999 and 2000 amendments to Labor Code Section 4600.5. (Statutes 1999, Chapter 525 Section 22 and Statutes 2000, Chapter 857, Section 19.)

This change is a change without regulatory effect pursuant to § 100(a)(6), Title 1, California Code of Regulations, as this action will conform the regulatory provision to a changed California statute. The current provision is inconsistent with and superseded by the changed statute, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

**4. Section 9772 – General Standards:**

**Section Amended: Subdivision (7):**

The subdivision provides that an HCO shall have the organizational, financial, and administrative capacity to provide services to employers, claims administrators, and HCO enrollees. The HCO shall also be able to demonstrate to the Division that medical decisions are rendered by qualified providers unhindered by fiscal and administrative management, and that such decisions adhere to professionally recognized standards of care.

**Specific Purpose of Amendment:**

The proposed amendment will require any applicant for certification as an HCO that is owned in whole or in part or controlled by a workers' compensation insurer or self-insured employer to demonstrate, in addition to the other requirements set forth in this section, that the organization's claims function shall have no influence or control over medical decision-making.

The proposed amendment will also require such an applicant to demonstrate that the clear authority of its Medical Director over all medical decisions is reflected both in its organizational chart and any internal procedure manual or other internal description of HCO operations.

**Factual Basis That Amendment is Necessary:**

Labor Code Section 4600.3(a)(1), as amended effective January 1, 2003, will provide that if the HCO offered by the employer is the workers' compensation insurer that covers the employee or is an entity that controls or is controlled by that insurer, as defined by Section 1215 of the Insurance Code, this information shall be included in the notice of contract with a health care

organization. (Statutes 2002, Chapter 6, Section 61.)

The amendment is necessary to ensure that there is appropriate separation of fiscal and medical decision-making where the HCO is owned by an insurer or self-insured employer whose primary focus is on cost containment. This is necessary as an employer will no longer be required to offer a second HCO to the employee as an alternative choice if the HCO offered controls or is owned or controlled by the employer's workers' compensation insurer. The further provision that the HCO's medical director must have clear authority over medical decision-making is necessary to ensure that the financial motivations of the insurer or self-insured employer do not interfere with the quality of care provided to enrolled employees.

## **5. Section 9779 – Certification:**

### **Section Adopted – Subdivision (b):**

The subdivision provides that once an applicant has completed an application and submitted a fee in accordance with Section 9771 and has demonstrated to the Administrative Director that its organization has met all of the criteria for certification, the Administrative Director will certify the organization as an HCO for a period of three years, unless earlier revoked or suspended.

### **Specific Purpose of Adoption:**

The proposed new subdivision will provide that once the Administrative Director has determined that an entity licensed as a full service health care service plan under Section 1353 of the Health and Safety Code (a Knox-Keene Health Care Service Plan Act) and deemed to be an HCO pursuant to Labor Code Section 4600.5(c) has complied with the requirements of Section 9771 subdivisions (g) (1) and (2) the Administrative Director shall certify the organization as an HCO, pursuant to Section 4600.5(c), for a period of three years unless earlier revoked or suspended.

The remaining subdivisions are being renumbered to accommodate this change.

### **Factual Basis That Adoption is Necessary:**

Effective January 1, 2003 Labor Code Section 4600.5(c) will be amended to provide that an HMO licensed pursuant to the Knox-Keene Health Care Service Plan Act shall be deemed to be an HCO without further application. Those HCOs will be required to maintain good standing with the Department of Managed Health Care and meet additional requirements as specified, including complying with any other requirement the Administrative Director determines is necessary to provide medical services to injured employees consistent with the intent of Article 2 of Chapter 2 of Part 2 of Division 4 of the Labor Code, including, but not limited to, a written patient grievance policy.

The proposed new subdivision will inform the regulated public that the Administrative Director has determined that compliance with Sections 9772 through 9778 of Title 8 is necessary for an HMO deemed an HCO to adequately provide medical services to injured employees. (Section 9772 sets forth the general standards an HCO must meet to obtain and maintain its certification, Section 9773 prescribes treatment standards, Section 9773.1 requires an HCO to maintain

guidelines for referrals to chiropractors, Section 9774 concerns quality of care standards, Section 9775 specifies that an HCO must have a written grievance and dispute procedure, Section 9776 requires HCOs to provide workplace safety and health services, Section 9776.1 requires HCOs to maintain return to work programs, Section 9777 requires HCOs to provide patient educational and informational services, Section 9779.1 requires HCOs to cooperate with any on-site survey conducted by the Division and Section 9778 requires HCOs to report specified information to the Administrative Director.)

**Section Repealed: Subdivision (d):**

The subdivision provides that an applicant that has received provisional certification under prior regulations may obtain full certification upon payment of the balance of the full application fee required pursuant to the current regulations.

**Specific Purpose of Repeal:**

The proposed amendment will repeal as unnecessary the provision for applicants that received provisional certification under prior provisions of the current regulations to obtain full certification upon payment of the remaining balance of the application fee required by the current regulations.

**Factual Basis That Repeal is Necessary:**

No remaining HCO applicants provisionally certified under prior provisions of the current regulations exist.

**6. Section 9779.1 – On-Site Surveys:**

**Section Amended: Subdivision (a):**

The subdivision provides that when the Administrative Director deems it necessary to perform an on-site survey in order to ensure compliance with the HCO regulations, the Administrative Director will coordinate any on-site survey with the Department of Corporations to the extent feasible.

**Specific Purpose of Amendment:**

The proposed amendment changes a reference in this subdivision from the “Department of Corporations” to the “Department of Managed Health Care.”

**Factual Basis That Amendment is Necessary:**

The proposed amendment will conform the language of the regulation to the 1999 and 2000 amendments to Labor Code Section 4600.5. (Statutes 1999, Chapter 525 Section 22 and Statutes 2000, Chapter 857, Section 19.)

This change is a change without regulatory effect pursuant to § 100(a)(6), Title 1, California

Code of Regulations, as this action will conform the regulatory provision to a changed California statute. The current provision is inconsistent with and superseded by the changed statute, and the Division has no discretion to adopt a change that differs in substance from the one chosen. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

## **7. Section 9779.3 – Obligations of an Employer Covered by Contracts with Health Care Organization:**

### **Section Amended: Subdivisions (a)(1) – (4):**

These subdivisions require that if an insurer or employer, a group of self-insured employers, or self-insured employers has contracted with at least two HCOs, the employer must provide specified information to all employees who are eligible to be enrolled in the HCOs.

### **Specific Purpose of Amendments:**

The proposed amendments to subdivisions (1) – (4) will delete:

- the requirement for an employer to offer a choice from at least two HCOs;
- the requirement that if one or more of the HCOs offered by the employer is owned or controlled by the same individual or by the same corporate or business entity, the employer must provide information to explain the nature of any material and significant differences between the HCOs in a manner that would allow the employee to make an informed choice between HCOs; and,
- the requirement in Subdivision (a)(4) that for an employee enrolled in an HCO pursuant to paragraph (3) of Subdivision (c) of Section 4600.3(c)(3) of the Labor Code, the employee's personal physician or chiropractor for non-occupational care must be available to the employee within an HCO offered by the employer for the treatment of work injuries or illnesses.

The remaining subdivision is being renumbered to accommodate this change.

### **Factual Basis That Amendment is Necessary:**

AB 749 (Calderon, 2001-2002, Statutes 2002, Chapter 6, Section 61), effective January 1, 2003 will repeal the requirement to contract with two HCOs and repeal Labor Code Section 4600.3(c)(3) and cap the employer's medical control at 180 days.

### **Section Amended: Subdivision (b):**

Existing subdivision (b) provides that an employee who designates on a DWC Form 1194 that he or she does not wish to enroll in an HCO and wishes instead to pre-designate their own personal physician or chiropractor shall be given a form for such pre-designation by the employer within 3 working days of receipt by employer of the Form 1194.

Existing subdivision (b) also provides that if an employee chooses to change from one HCO to

another HCO or to designate a personal physician, the employee must designate such choice on a DWC Form 1194.

**Specific Purpose of Amendment:**

This subdivision is being amended to provide that an employee who designates on a DWC Form 1194 that he or she does not wish to enroll in an HCO and wishes instead to pre-designate their own personal physician or chiropractor shall pre-designate that physician or chiropractor on the Form 1194.

The subdivision is also being amended to provide that the requirement that an employee designate on a DWC Form 1194 if he or she chooses to change from one HCO to another HCO or chooses to designate a personal physician, will only apply if the employer offers more than one HCO.

**Factual Basis That Amendment is Necessary:**

The first amendment will reduce the paperwork required during the annual enrollment period. The HCO enrollment form is required to be given to each employee during the annual open enrollment, and therefore offers a convenient, early and effective means to pre-designate the employee's own personal physician or chiropractor.

The second proposed amendment is required for clarity as AB 749 (Calderon, 2001-2002, Statutes 2002, Chapter 6, Section 61), effective January 1, 2003 will repeal the requirement to contract with two HCOs.

**Section Repealed: Subdivision (c):**

Existing subdivision (c) provides that for an employee enrolled in an HCO pursuant to paragraph (3) of Subdivision (c) of Section 4600.3 of the Labor Code, the employee's personal physician or chiropractor for non-occupational care must be available to the employee within an HCO offered by the employer for the treatment of work injuries or illnesses.

**Specific Purpose of Repeal:**

To eliminate a regulatory provision for which no statutory authority will exist after January 1, 2003.

**Factual Basis That Repeal is Necessary:**

AB 749 will repeal Labor Code Section 4600.3(c)(3), effective January 1, 2003. Labor Code Section 4600.3(c)(3) is the statutory authority for Section 9779.3(c).

The repeal of this subdivision is a change without regulatory effect pursuant to § 100(a)(2), Title 1, California Code of Regulations, as this action will delete a regulatory provision for which all statutory authority has been repealed. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory

provision.

#### **8. Section 9779.4 – DWC Form 1194:**

Labor Code Section 4600.3(a)(1) requires that every employee shall be given an affirmative choice at the time of employment and at least annually thereafter to designate or change the designation of an HCO or a personal physician, personal chiropractor, or personal acupuncturist. The choice must be memorialized in writing and maintained in the employee's personnel records. The employee who has designated a personal physician, personal chiropractor, or personal acupuncturist may change their designated caregiver at any time prior to the injury. Any employee who fails to choose between health care organizations or to designate a personal physician, personal chiropractor, or personal acupuncturist may be enrolled in the HCO selected by the employer.

#### **Section Amended:**

Existing Section 9779.4 provides the annual enrollment form that complies with Labor Code Section 4600.3(a)(1)'s requirements.

#### **Specific Purpose of Amendments:**

Specifically, the proposed amendments:

1. Delete references to the requirements to offer two or, in some cases, three HCOs and revise the grammatical structure of the form accordingly.
2. Inform the employee if the employer's insurer owns or controls the HCO being offered.
3. Delete the reference to one-year medical control.
4. Add to the title on the back of the form the phrase "For Workers' Compensation Health Care;"
5. Advise the employee that if they choose to predesignate a physician or chiropractor, they should do so on the form in the space provided on the form.
5. Provide a space for writing the predesignated physician or chiropractor's name and address.
6. Clarify that the "date" on the form is the date that the employee signs the form.

#### **Factual Basis That Amendment is Necessary:**

The first three proposed amendments will conform the annual enrollment form to the changes in the Labor Code and revised regulations as set forth above.

The addition of the phrase "For Workers' Compensation Health Care" will improve the clarity of the form as some employee's have expressed confusion as to whether the form applies to non-workers' compensation health care.

Advising the employee that if they choose to predesignate a physician or chiropractor, they should do so on the form in the space provided on the form and providing a space for writing the predesignated physician or chiropractor's name and address will reduce the paperwork required during the annual enrollment period. The HCO enrollment form is required to be given to each employee during the annual open enrollment, and therefore offers a convenient, early and effective means to pre-designate the employee's own personal physician or chiropractor.

The final amendment will improve the clarity of the form by clarifying that the "date" on the form is the date that the employee signs the form. Some DWC forms require entry of the date that the form was provided to the recipient.

#### **9. Section 9779.45 – Minimum Periods of Enrollment:**

Section 9779.45 sets forth the respective amounts of time Labor Code Section 4600.3 requires to elapse before an employee who is enrolled in an HCO may obtain treatment from a private physician chiropractor, or acupuncturist of his or her own choice, with the required time depending on whether the employer offers non-occupational health coverage.

Existing Subdivision (c) restates the provisions of Labor Code Section 4600.3(c).

#### **Specific Purpose of Repeal:**

To eliminate a regulatory provision for which no statutory authority will exist after January 1, 2003.

#### **Factual Basis That Repeal is Necessary:**

AB 749, effective January 1, 2003 will repeal Labor Code Section 4600.3(c) and cap the maximum employer medical control at 180 days.

This proposed amendment is a change without regulatory effect pursuant to § 100(a)(2), Title 1, California Code of Regulations, as this action will delete a regulatory provision for which all statutory authority has been repealed. The change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the regulatory provision.

#### **10. Section 9779.5 – Reimbursement of Costs to the Administrative Director; Obligation to Pay Share of Administrative Expense:**

#### **Section Amended:**

Existing Section 9779.3 requires all organizations certified as HCOs or WCHCPOs to pay an annual assessment to the Workers' Compensation Managed Care Fund representing that entity's share of the costs and expenses reasonably incurred in the administration of the HCO program.

The annual assessment may be paid in two equal installments, with the first payment falling due on or before July 1 and the second installment falling due on or before December 15.

**Specific Purpose of Amendment:**

The proposed amendment would require the annual assessment to be paid in a single payment due on or before July 1.

**Factual Basis That Amendment is Necessary:**

The current payment schedule poses an undue burden on DWC's Managed Care Program by further delaying recovery of program costs and staff expenses. These fees are not collected until the calendar year after the services were provided and the expenses incurred.

**TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

The Division did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the above-identified amendments.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

The proposed regulations do not mandate the use of specific technologies or equipment.

**REASONABLE ALTERNATIVES TO THE PROPOSED AMENDMENTS AND REASONS FOR REJECTING THOSE ALTERNATIVES**

The Division considered two alternatives.

The first alternative would have been to propose no amendments at this time. This alternative was rejected because the enactment of AB 749 will require the adoption of regulations to interpret and make specific its provisions. In addition, AB 749 will repeal the authority for some of the existing regulations. Finally, some of the existing regulations have become outdated and are no longer needed.

The second alternative was to propose amendments to address only some of the problems discussed above in this Initial Statement of Reasons. This alternative was rejected because it is more efficient to address as many significant issues as can be feasibly addressed in one rulemaking and because some issues required changes to several different regulations.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Division is not aware of any adverse impacts on small business. Thus, the Division has not identified any alternatives that would lessen any adverse impact on small business. The Division invites the submission during the public comment periods for this rulemaking of comments identifying any possible adverse impacts on small businesses, and the proposing of alternatives that would lessen any adverse impact on small business.



## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The only economic impact of the regulations will be to impose a \$10,000 documentation processing and review fee in the event an HMO licensed as a full service health care service plan under Section 1353 of the Health and Safety Code (a Knox-Keene Health Care Service Plan Act) and deemed to be an HCO pursuant to Labor Code Section 4600.5(c), seeks certification as an HCO. This is half the fee required of a non-HMO applicant for certification.

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